

**Proposed Substitute
Bill No. 5358**

LCO No. 5702

**AN ACT ESTABLISHING A BILL OF RIGHTS FOR RESIDENTS OF
CONTINUING-CARE RETIREMENT COMMUNITIES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-520 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2015*):

3 As used in this section, sections [17b-520] 17b-521 to 17b-535,
4 inclusive, as amended by this act, and sections 2 to 4, inclusive, of this
5 act:

6 [(a)] (1) "Continuing-care contract" means an agreement pursuant to
7 which a provider undertakes to furnish to a person not related by
8 consanguinity or affinity to the provider, care and shelter in a facility
9 or care at home with the right to future access to care and shelter in
10 such facility and medical or nursing services or other health-related
11 benefits for the life of a person or for a period in excess of one year,
12 and which requires a present or future transfer of assets or an entrance
13 fee in addition to or instead of periodic charges, and the amount of the
14 assets required to be transferred or the entrance fee is equal to or in
15 excess of the amount set by the commissioner in regulations adopted
16 pursuant to section 17b-533, as amended by this act;

17 [(b)] (2) "Entrance fee" means the total of any initial or deferred

18 transfer to, or for the benefit of, a provider of a sum of money or other
19 property made or promised to be made as full or partial consideration
20 for acceptance or maintenance of a person as a resident pursuant to a
21 continuing-care contract;

22 [(c)] (3) "Facility" means the place in which a provider undertakes to
23 furnish shelter and care to a person pursuant to a continuing-care
24 contract;

25 [(d)] (4) "Provider" means any person, corporation, limited liability
26 company, business trust, trust, partnership, unincorporated association
27 or other legal entity, or any combination of such entities, undertaking
28 to furnish care and shelter in a facility or care at home with the right to
29 future access to care and shelter in such facility and medical or nursing
30 services or other health-related benefits pursuant to a continuing-care
31 contract;

32 [(e)] (5) "Resident" means any person entitled to receive present or
33 future shelter, care and medical or nursing services or other health-
34 related benefits pursuant to a continuing-care contract, provided
35 nothing in [sections 17b-520] this section, sections 2 to 4, inclusive, of
36 this act or sections 17b-521 to 17b-535, inclusive, as amended by this
37 act, shall affect rights otherwise afforded to residents while they are
38 patients in health care facilities as defined in subsections (a), (b) and (c)
39 of section 19a-490;

40 (6) "Residents council" means a board duly elected by residents at a
41 facility to advocate for residents' rights and function as an advisory
42 board to the provider with respect to resident welfare and interests;

43 [(f)] (7) "Affiliate of a provider" means any person, corporation,
44 limited liability company, business trust, trust, partnership,
45 unincorporated association or other legal entity directly or indirectly
46 controlling, controlled by or in common control with a provider;

47 [(g)] (8) "Offer" means an offer through either personal, telephone or

48 mail contact or other communication directed to or received by a
49 person at a location within this state as an inducement, solicitation or
50 attempt to encourage a person to enter into a continuing-care contract
51 and shall include any paid advertisement published or broadcast
52 within this state, except for advertisements in periodicals where more
53 than two-thirds of the circulation is outside this state but shall not
54 include marketing or feasibility studies;

55 [(h)] (9) "Shelter" means a room, apartment, cottage or other living
56 area in a facility set aside for the exclusive use of one or more persons
57 pursuant to a continuing-care contract;

58 [(i)] (10) "Medical or nursing services or other health-related
59 benefits" means services or benefits which shall include care in a
60 nursing facility, priority admission to a nursing facility, home health
61 care or assistance with activities of daily living, to which a resident
62 becomes contractually entitled;

63 [(j)] (11) "Department" means the Department of Social Services;

64 [(k)] (12) "Commissioner" means the Commissioner of Social
65 Services.

66 Sec. 2. (NEW) (*Effective July 1, 2015*) Each resident of a continuing-
67 care retirement facility is entitled to:

68 (1) A voice in all decisions affecting the resident's health, welfare
69 and financial security;

70 (2) Transparency regarding the financial stability of the provider
71 operating the facility at which the resident resides;

72 (3) Timely notification of developments affecting the facility,
73 including, but not limited to: (A) Ownership changes of the provider
74 operating the facility at which the resident resides, (B) a change in the
75 financial condition of the provider operating the facility at which the
76 resident resides, and (C) construction and renovation at the facility at

77 which the resident resides;

78 (4) Independence in decisions regarding medical care and assisted
79 living services; and

80 (5) Reasonable accommodations for persons with disabilities.

81 Sec. 3. (NEW) (*Effective July 1, 2015*) (a) Each provider shall develop
82 a process for facilitating communication between residents and the
83 personnel, management, board of directors and owner of the provider.
84 Such process shall include, but not be limited to:

85 (1) Permitting residents at each facility to form a residents council;

86 (2) Allowing residents, including those who serve on the residents
87 council, to serve as voting members of the provider's board of directors
88 or other governing body if the rules applicable to such board or other
89 governing body allow for resident membership and such board or
90 other governing body approves such membership; and

91 (3) If the provider does not have a board of directors or similar
92 governing body, or if a resident council is not established, then a
93 provider shall seek comments from residents in advance of designing
94 or adopting policies that affect the provider's ability to avert financial
95 distress, as defined in section 17b-527, as amended by this act.

96 (b) On or before January 1, 2016, and not less than every two years
97 thereafter, each provider shall conduct a resident satisfaction survey at
98 each facility. The results of the survey shall be made available to the
99 residents council at each such facility, or to each resident, if there is no
100 residents council. A copy of the survey results shall also be posted in a
101 conspicuous location at each facility.

102 Sec. 4. (NEW) (*Effective July 1, 2015*) (a) A provider shall not prevent
103 or otherwise infringe upon a residents right to obtain treatment, care
104 and services, including, but not limited to, home health and hospice
105 care, from persons providing health care who have not entered into a

106 contract with or are not affiliated with the provider, subject to the
107 provider's policies and procedures for protecting the health and safety
108 of residents.

109 (b) Residents at a continuing-care retirement facility receiving
110 assisted living or skilled nursing services shall be entitled to all rights
111 and protections afforded under the law, including the right to refuse
112 medications and treatments. A provider shall not prevent or otherwise
113 infringe upon a resident's right to participate, as fully and
114 meaningfully as the resident is able, in making the decision about a
115 permanent move to an assisted living facility or skilled nursing care
116 unit. A provider shall inform family members designated by the
117 resident of the resident's medical condition and care plan. A provider
118 shall not prevent or otherwise infringe upon a resident's right to refuse
119 medications and treatments.

120 (c) Each provider operating a facility shall make reasonable
121 accommodations, in accordance with the Americans with Disabilities
122 Act, 42 USC 12101, et seq., the Fair Housing Amendments Act of 1988,
123 42 USC 1997, et seq., and section 46a-64c of the general statutes to
124 ensure that services and notices are accessible and communicated to
125 residents who have hearing loss, low vision or other disabilities.

126 Sec. 5. Section 17b-521 of the general statutes is repealed and the
127 following is substituted in lieu thereof (*Effective July 1, 2015*):

128 No provider shall offer or enter into a continuing-care contract in
129 this state or with any resident of this state or regarding any facility in
130 this state and no change in ownership of such a facility shall be
131 completed unless the provider or proposed owner, as the case may be,
132 has (1) registered with the department by filing a (A) current
133 disclosure statement that meets the requirements of section 17b-522, as
134 amended by this act, (B) financial information [that meets the
135 requirements of] as required pursuant to section 17b-527, as amended
136 by this act, and (C) a sworn statement of the escrow agent to the effect

137 that the escrows required by sections 17b-524, as amended by this act,
138 and 17b-525, as amended by this act, have been established; [, has] (2)
139 received acknowledgment of such filing; and [has] (3) paid an annual
140 filing fee of twenty-four dollars per residential unit operated by such
141 provider. Acknowledgment of filing shall be furnished to the provider
142 by the commissioner within ten business days of the date of filing. The
143 commissioner may waive the requirements of this section if a change
144 of ownership is proposed pursuant to section 17b-532 or a federal
145 bankruptcy proceeding.

146 Sec. 6. Section 17b-522 of the general statutes is repealed and the
147 following is substituted in lieu thereof (*Effective July 1, 2015*):

148 (a) Before the execution of a contract to provide continuing care, or
149 before the transfer of any money or other property to a provider by or
150 on behalf of a prospective resident, whichever shall occur first, the
151 provider shall deliver to the person with whom the contract is to be
152 entered into, or to that person's legal representative, a conspicuous
153 statement notifying the prospective resident that:

154 (1) A continuing-care contract is a financial investment and his
155 investment may be at risk;

156 (2) The provider's ability to meet its contractual obligations under
157 such contract depends on its financial performance;

158 (3) [He] The prospective contract holder is advised to consult an
159 attorney or other professional experienced in matters relating to
160 investments in continuing-care facilities before he signs a contract for
161 continuing care; and

162 (4) The department does not guarantee the security of his
163 investment.

164 (b) Before the execution of a contract to provide continuing care, or
165 before the transfer of any money or other property to a provider by or

166 on behalf of a prospective resident, whichever shall occur first, the
167 provider shall deliver to the person with whom the contract is to be
168 entered into, or to that person's legal representative, a disclosure
169 statement. The text of the disclosure statement shall contain, to the
170 extent not clearly and completely set forth in the contract for
171 continuing care attached as an exhibit thereto, at least the following
172 information:

173 (1) The name and business address of the provider and a statement
174 of whether the provider is a partnership, corporation or other legal
175 entity;

176 (2) The names of the officers, directors, trustees, or managing and
177 general partners of the provider, the names of persons having a five
178 per cent or greater ownership interest in the provider, and a
179 description of each such person's occupation with the provider;

180 (3) A description of the business experience of the provider and of
181 the manager of the facility if the facility will be managed on a day-to-
182 day basis by an organization other than the provider, in the
183 administration of continuing-care contracts or in the administration of
184 similar contractual arrangements;

185 (4) A description of any matter in which the provider, any of the
186 persons described in subdivision (2) of this subsection, or the manager
187 has been convicted of a felony or pleaded nolo contendere to a felony
188 charge, or held liable or enjoined in a civil action by final judgment, if
189 the felony or civil action involved fraud, embezzlement, fraudulent
190 conversion or misappropriation of property; or is subject to a currently
191 effective injunction or restrictive or remedial order of a court of record,
192 within the past five years has had any state or federal license or permit
193 suspended or revoked as a result of an action brought by a
194 governmental agency or department, arising out of or relating to
195 business activity or health care, including, but not limited to, actions
196 affecting the operation of a foster care facility, nursing home,

197 retirement home, residential care home, or any facility subject to
198 sections 17b-520 to 17b-535, inclusive, as amended by this act, sections
199 2 to 4, inclusive, of this act, or a similar statute in another state or
200 country;

201 (5) A statement as to whether or not the provider is, or is affiliated
202 with, a religious, charitable, nonprofit, or for-profit organization; the
203 extent of the affiliation, if any; the extent to which the affiliate
204 organization will be responsible for the financial and contractual
205 obligations of the provider; and the provision of the federal Internal
206 Revenue Code, if any, under which the provider or affiliate is exempt
207 from the payment of income tax;

208 (6) The location and a description of the physical property or
209 properties of the provider, existing or proposed; and, if proposed, the
210 estimated completion date or dates, whether or not construction has
211 begun, and the contingencies subject to which construction may be
212 deferred;

213 (7) The goods and services provided or proposed to be provided
214 without additional charge under the contract for continuing care
215 including the extent to which medical or nursing care or other health-
216 related benefits are furnished;

217 (8) The disposition of interest earned on entrance fees or other
218 deposits held in escrow;

219 (9) A description of the conditions under which the continuing-care
220 contract may be terminated, whether before or after occupancy, by the
221 provider or by the resident. In the case of termination by the provider,
222 a description of the manner and procedures by which a decision to
223 terminate is reached by the provider, including grounds for
224 termination, the participation of a resident's council or other group, if
225 any, in reaching such a decision, and any grievance, appeal or other
226 similar procedures available to a resident whose contract has been
227 terminated by the provider;

228 (10) A statement setting forth the rights of a surviving spouse who
229 is a resident of the facility and the effect of the continuing-care contract
230 on the rights of a surviving spouse who is not a resident of the facility,
231 in the event of the death of a resident, subject to any limitations
232 imposed upon such rights by statute or common law principles;

233 (11) A statement of the effect of a resident's marriage or remarriage
234 while in the facility on the terms of such resident's continuing-care
235 contract;

236 (12) Subject to the provisions of subsection [(g)] (j) of this section, a
237 statement of the provider's policy regarding disposition of a resident's
238 personal property in the event of death, temporary or permanent
239 transfer to a nursing facility, or termination of the contract by the
240 provider;

241 (13) A statement that payment of an entrance fee or other transfer of
242 assets pursuant to a continuing-care contract may have significant tax
243 consequences and that any person considering such a payment or
244 transfer may wish to consult a qualified advisor;

245 (14) The provisions that have been made or will be made by the
246 provider for reserve funding and any other security to enable the
247 provider to perform fully its obligations under continuing-care
248 contracts, including, but not limited to, escrow accounts established in
249 compliance with sections 17b-524, as amended by this act, and 17b-525,
250 as amended by this act, trusts or reserve funds, together with the
251 manner in which such funds will be invested and the names and
252 experience of the persons making or who will make investment
253 decisions; [. Disclosure shall include a summary of the information
254 contained in the five-year financial information filed with the
255 commissioner pursuant to section 17b-527; such summary shall set
256 forth by year any anticipated excess of future liabilities over future
257 revenues and shall describe the manner in which the provider plans to
258 meet such liabilities;]

259 (15) [Audited and certified financial statements of the provider,
260 including (A) a balance sheet as of the end of the most recent fiscal
261 year, and (B) income statements for the three] The provider's financial
262 statements, including a balance sheet, income statement and statement
263 of cash flow, associated notes or comments to these statements,
264 audited by an independent certified public accounting firm for the two
265 most recent fiscal years of the provider or such shorter period of time
266 as the provider shall have been in existence;

267 (16) Subject to the provisions of subsection [(g)] (j) of this section, if
268 the operation of the facility has not yet commenced, or if the
269 construction of the facility is to be completed in stages, a statement of
270 the anticipated source and application of the funds used or to be used
271 in the purchase or construction of the facility or each stage of the
272 facility, including:

273 (A) An estimate of such costs as financing expense, legal expense,
274 land costs, marketing costs, and other similar costs which the provider
275 expects to incur or become obligated for prior to the commencement of
276 operations of each stage of the facility;

277 (B) A description of any mortgage loan or any other financing
278 intended to be used for the financing of the facility or each stage of the
279 facility, including the anticipated terms and costs of such financing;

280 (C) An estimate of the total entrance fees to be received from or on
281 behalf of residents at or prior to commencement of operation of each
282 stage of the facility; and

283 (D) An estimate of the funds, if any, which are anticipated to be
284 necessary to fund start-up losses and provide reserve funds to assure
285 full performance of the obligations of the provider under continuing-
286 care contracts;

287 (17) Pro forma [annual income] cash flow statements for the facility
288 for the next [five] three fiscal years, including a summary of

289 projections used in the assumptions for such pro forma statements,
290 including, but not limited to, anticipated resident turnover rates,
291 average age of residents, health care utilization rates, the number of
292 health care admissions per year, days of care per year and the number
293 of permanent transfers;

294 (18) The facility's current rate schedules for entrance fees, monthly
295 fees, fees for ancillary services and current occupancy rates;

296 ~~[(18)]~~ (19) A description of all entrance fees and periodic charges, if
297 any, required of residents and a record of past increases in such fees
298 and charges during the previous [seven] five years;

299 [(19) For each facility operated by the provider, the total actuarial
300 present value of prepaid healthcare obligations assumed by the
301 provider under continuing-care contracts as calculated on an
302 actuarially sound basis using reasonable assumptions for mortality
303 and morbidity;]

304 (20) A statement that all materials required to be filed with the
305 department are on file, a brief description of such materials, and the
306 address of the department at which such materials may be reviewed;

307 (21) The cover page of the disclosure statement shall state, in a
308 prominent location and type face, the date of the disclosure statement
309 and that registration does not constitute approval, recommendation, or
310 endorsement by the department or state, nor does such registration
311 evidence the accuracy or completeness of the information set out in the
312 disclosure statement;

313 (22) If the construction of the facility is to be completed in stages, a
314 statement as to whether all services will be provided at the completion
315 of each stage and, if not, the services that will not be provided listed in
316 bold print; [.]

317 (23) A sworn statement of the applicable escrow agents to the effect

318 that the escrows required by sections 17b-524, as amended by this act,
319 and 17b-525, as amended by this act, have been established and
320 maintained or an independent certified public accounting firm has
321 verified such escrow accounts.

322 (c) Each provider operating a facility in this state shall make the
323 information filed with the department pursuant to this section
324 available to each such resident for viewing during regular business
325 hours and, upon request, shall provide such resident with a copy of
326 the most recent filing with the department. Each provider shall notify
327 each resident, at least annually, of the right to view the filings and of
328 the right to a copy of the most recent filing.

329 (d) The registration of a facility pursuant to section 17b-521, as
330 amended by this act, shall remain effective unless withdrawn by the
331 provider or unless the provider fails to file the documents specified in
332 this section within one hundred fifty days following the end of the first
333 fiscal year in which such registration is filed. The provider shall file a
334 revised disclosure statement at least annually with the commissioner.
335 The provider shall also file a narrative describing any material
336 differences between the pro forma income and cash flow statements
337 filed pursuant to this section and the actual results of operations
338 during the most recently concluded fiscal year. A provider may revise
339 its previously filed disclosure statement at any time if, in the opinion
340 of the provider, revision is necessary to prevent the disclosure
341 statement from containing a material misstatement of fact or from
342 omitting a material fact required to be included in the statement. Only
343 the most recently filed disclosure statement, as amended from time to
344 time, shall be deemed current for purposes of sections 17b-520 to 17b-
345 535, inclusive, as amended by this act, and sections 2 to 4, inclusive, of
346 this act.

347 (e) The facility shall amend the most recently filed disclosure
348 statement prior to undertaking major facility construction, renovation,
349 or expansion or change of ownership to avoid a material misstatement

350 or omission of a material fact.

351 [(c)] (f) (1) Not more than sixty nor less than ten days before the
352 execution of a contract to provide continuing care, the provider shall
353 deliver a current disclosure statement to the person with whom the
354 contract is to be entered into or to that person's legal representative.

355 (2) Not more than sixty nor less than ten days before a person
356 occupies a continuing care facility, the provider shall deliver a revised
357 and up-to-date disclosure statement to the prospective resident or to
358 that person's legal representative, except that if there have been no
359 revisions to the disclosure statement previously delivered pursuant to
360 subdivision (1) of this subsection, the provider shall deliver a
361 statement to the prospective resident or representative that there have
362 been no revisions to the original disclosure statement.

363 [(d)] (g) The statement required under subsections (a) and (b) of this
364 section shall be signed and dated by the prospective resident before
365 the execution of a contract to provide continuing care or before the
366 transfer of any money or other property to a provider by or on behalf
367 of the prospective resident. Each such statement shall contain an
368 acknowledgment that such statement and the continuing-care contract
369 have been reviewed by the prospective resident or his legal
370 representative. Such signed statements shall be kept on file by the
371 provider for a period of not less than the term of the contract.

372 [(e)] (h) Each statement required under subsections (a) and (b) of
373 this section and the continuing-care contract shall be in language easily
374 readable and understandable in accordance with the provisions of
375 subsections (a) and (b) of section 42-152.

376 [(f)] (i) A copy of the standard form or forms of the continuing-care
377 contract used by the provider shall be attached as an exhibit to each
378 disclosure statement.

379 [(g)] (j) The provisions of subdivisions (12) and (16) of subsection (b)

380 of this section shall not apply to a continuing-care contract for the
381 provision of care in a person's home.

382 [(h)] (k) The commissioner may adopt regulations in accordance
383 with the provisions of chapter 54 to specify any additional information
384 required in the disclosure statement.

385 Sec. 7. Section 17b-523 of the general statutes is repealed and the
386 following is substituted in lieu thereof (*Effective July 1, 2015*):

387 (a) Each continuing-care contract shall provide:

388 (1) That the party contracting with the provider may rescind the
389 contract by notifying the provider in writing by registered or certified
390 mail of such rescission within thirty days following the execution of
391 the contract; that in the event of such rescission, any money or
392 property transferred to the provider shall be refunded, less (A) those
393 costs specifically incurred by the provider or facility at the request of
394 the resident and described in the contract or in an addendum thereto
395 signed by the resident; and (B) a reasonable service charge, not to
396 exceed the greater of one thousand dollars or two per cent of the
397 entrance fees; and, if applicable, that the resident to whom the contract
398 pertains shall not be required to move into the facility before the
399 expiration of the thirty-day period;

400 (2) That if, after the thirty-day period, a resident dies before
401 occupying a contracted-for living unit, or on account of illness, injury
402 or incapacity is precluded from occupying a contracted-for living unit
403 under the terms of the continuing-care contract, or a resident dies
404 before the commencement of care under a continuing-care contract to
405 provide care in such person's home, upon notice to the provider by
406 registered or certified mail, the contract is automatically cancelled and
407 the resident or the resident's legal representative shall receive a refund
408 of all money or property transferred to the provider, less (A) those
409 costs specifically incurred by the provider or facility at the request of
410 the resident and described in the contract or in an addendum thereto

411 signed by the resident; (B) a reasonable service charge not to exceed
412 the greater of one thousand dollars, or two per cent of the entrance fee,
413 and (C) if the contract includes occupying a living unit in a facility and
414 the unit was actually available for occupancy, the usual monthly
415 charge for that unit, prorated on a per diem basis, for the period
416 beginning seven days after the execution of the contract and ending on
417 the last day of the month in which the provider receives notice that the
418 resident will not occupy the unit;

419 (3) [That] For contracts entered into after the effective date of this
420 act, that if construction of the facility has not yet begun, construction
421 will not begin until a minimum number of living units, which shall not
422 be less than one-half of the units in the facility [or if the construction is
423 to be completed in stages, one-half of the units evidencing financial
424 feasibility in accordance with section 17b-526,] or fifty per cent of any
425 designated part or parts thereof determined by the commissioner have
426 been presold, and a minimum deposit of [five per cent of the entrance
427 fee per unit for all presold units or] ten thousand dollars per unit for
428 all presold units [, whichever is less,] has been received by the
429 provider. The requirements of this subdivision shall not apply to any
430 continuing-care contract for the provision of care in a person's home.

431 (b) Each continuing-care contract shall also specify:

432 (1) The circumstances under which the resident will be permitted to
433 continue to receive care and shelter in a facility or care at home with
434 the right to future access to care and shelter in such facility and
435 medical or nursing services or other health-related benefits, and other
436 benefits under the continuing-care contract in the event of possible
437 financial difficulties on the part of the resident;

438 (2) The terms and conditions under which a contract for continuing
439 care may be cancelled by the provider or by the resident; and the
440 conditions, if any, under which all or any portion of the entrance fee
441 will be refunded in the event of cancellation of the contract by the

442 provider or by the resident or in the event of the death of the resident
443 prior to or following occupancy of a living unit, provided that, for
444 contracts entered into after the effective date of this act, any refund
445 shall be delivered to the resident or the resident's estate not later than
446 two years from the date the living unit is vacated or when contractual
447 conditions for releasing the refund have been met, whichever occurs
448 first;

449 (3) The conditions under which a living unit occupied by a resident
450 may be made available by the provider to a different or new resident
451 other than on the death of the original resident;

452 (4) The manner in which the provider may adjust periodic charges
453 or other recurring fees and the limitations of such adjustments, if any,
454 [and, if there is no such limitation, a clear statement that such increases
455 may be made at the discretion of the provider] including, but not
456 limited to, for contracts entered into after the effective date of this act,
457 no periodic charges on other recurring fees may be increased unless a
458 resident has been provided not less than thirty days' advance written
459 notice of such fee increase.

460 Sec. 8. Section 17b-524 of the general statutes is repealed and the
461 following is substituted in lieu thereof (*Effective July 1, 2015*):

462 (a) Prior to soliciting or entering into any contract for the provision
463 of continuing care, the provider shall establish with a bank or trust
464 company as an escrow agent, an entrance fee escrow pursuant to
465 which the provider shall deposit with the escrow agent, within
466 seventy-two hours of receipt by the provider, each entrance fee or
467 portion of an entrance fee received by the provider from or on behalf
468 of a resident prior to the date the resident is permitted to occupy a
469 living unit in the facility. [If the prospective resident, as defined in
470 section 17b-520, is a resident of this state at the time the continuing-
471 care contract is signed, the] The bank or trust company serving as
472 escrow agent for such fees received from such a resident shall have [its

473 principal] a place of business in this state. The entrance fee escrow
474 shall be subject to release as follows:

475 (1) If the entrance fee applies to a living unit that has been
476 previously occupied in the facility, the entrance fee shall be released to
477 the provider at the time the living unit becomes available for
478 occupancy by the new resident, or shall be returned to the resident or
479 the resident's personal representative under the conditions described
480 in section 17b-523, as amended by this act, if the escrow agent has
481 received written demand by registered or certified mail for return of
482 the entrance fee prior to the release thereof to the provider;

483 (2) If the entrance fee applies to a living unit which has not
484 previously been occupied by any resident, the entrance fee shall be
485 returned to the resident or the resident's legal representative under the
486 conditions described in section 17b-523, as amended by this act, if the
487 escrow agent receives written demand by registered or certified mail
488 for return of the entrance fee prior to release thereof to the provider, or
489 the entrance fee shall be released to the provider at the time all of the
490 following conditions have been met:

491 (A) The sum of the entrance fees received or receivable by the
492 provider pursuant to binding contracts for continuing care, plus the
493 anticipated proceeds of any first mortgage loan or other long-term
494 financing commitment, plus funds from other sources in the actual
495 possession of the provider, equals or exceeds the sum of seventy-five
496 per cent of the aggregate cost of constructing or purchasing, equipping
497 and furnishing the facility plus seventy-five per cent of the funds
498 estimated in the statement of anticipated source and application of
499 funds submitted by the provider as part of its disclosure statement to
500 be necessary to fund start-up losses of the facility plus seventy-five per
501 cent of the amount of the reserve fund escrow required to be
502 maintained by the provider pursuant to section 17b-525, as amended
503 by this act;

504 (B) A commitment has been received by the provider for any
505 permanent mortgage loan or other long-term financing described in
506 the statement of anticipated source and application of funds included
507 in the current disclosure statement on file pursuant to section 17b-522,
508 as amended by this act, and any conditions of the commitment prior to
509 disbursement of funds thereunder, other than completion of the
510 construction or closing of the purchase of the facility, have been
511 substantially satisfied; and

512 (C) If construction of the facility has not been substantially
513 completed, all governmental permits or approvals necessary prior to
514 the commencement of construction have been obtained; and a
515 maximum price contract has been entered into between the provider
516 and a general contractor responsible for construction of the facility; a
517 bond covering the faithful performance of the construction contract by
518 the general contractor and the payment of all obligations arising
519 thereunder has been issued by an insurer authorized to do business in
520 this state with the provider as obligee; a loan agreement has been
521 entered into by the provider for an interim construction loan in an
522 amount, when combined with the amount of entrance fees then held in
523 escrow under the provisions of this section plus the amount of funds
524 from other sources then in the actual possession of the provider, that
525 will equal or exceed the estimated cost of constructing, equipping and
526 furnishing the facility; not less than ten per cent of the amount of the
527 construction loan has been disbursed by the lender for physical
528 construction or site preparation work completed; and orders at firm
529 prices have been placed by the provider for not less than fifty per cent
530 in value, including installation charges if applicable, of items necessary
531 for equipping and furnishing the facility in accordance with the
532 description set forth in the disclosure statement required by section
533 17b-522, as amended by this act; or if construction or purchase of the
534 facility has been substantially completed, an occupancy permit
535 covering the living unit has been issued by the local government
536 having authority to issue these permits.

537 (b) The aggregate amount of entrance fees which may be released to
538 the provider pursuant to subparagraph (A) of subdivision (2) of
539 subsection (a) of this section prior to the date on which any reserve
540 fund escrow required to be established under section 17b-525, as
541 amended by this act, is established shall not exceed the aggregate
542 amount of entrance fees then received or receivable by the provider
543 pursuant to binding contracts for continuing care less the amount of
544 the entrance fees received or receivable which may be required to be
545 initially maintained in the reserve fund escrow.

546 (c) The provider shall provide each prospective resident who has
547 signed a contract for continuing care with the name, address, and
548 telephone number of the escrow agent and shall file a copy of the
549 escrow agreement with the department.

550 (d) The provisions of this section shall not apply to any continuing-
551 care contract for the provision of care in a person's home.

552 Sec. 9. Section 17b-525 of the general statutes is repealed and the
553 following is substituted in lieu thereof (*Effective July 1, 2015*):

554 (a) Except as provided in section 17b-534, on and after the date any
555 facility located in this state is first occupied by any resident, the
556 provider shall establish and maintain on a current basis, in escrow
557 with a bank, trust company, or other escrow agent having [its
558 principal] a place of business in this state, a portion of all entrance fees
559 received by the provider in an aggregate amount sufficient to cover: (1)
560 All principal and interest, rental or lease payments due during the next
561 [twelve] six months on account of any first mortgage loan or any other
562 long-term financing of the facility; and (2) the total cost of operations
563 of the facility for a one-month period, excluding debt service, rental or
564 lease payments as described in subdivision (1) of this subsection and
565 excluding capital expenditures. A provider may use funds in an
566 account established by or pursuant to a mortgage loan, bond indenture
567 or other long-term financing in its computation of the reserve amounts

568 required to satisfy this section, provided such funds are available to
569 make payments when operating funds are insufficient for these
570 purposes. To the extent that a provider is required pursuant to a
571 mortgage loan, bond indenture or other long-term financing to
572 maintain a certain number of days of cash on hand, cash amounts held
573 pursuant to such a requirement may be applied toward the provider's
574 computation of the operating reserve amount required to satisfy this
575 subsection. Notwithstanding any provision of this subsection, the
576 commissioner may accept the terms or covenants regarding the
577 establishment or maintenance of reserve or escrow funds or financial
578 ratios associated with a mortgage loan, bond indenture or other long-
579 term financing as an alternative to the reserve provisions set forth in
580 this subsection. The escrow agent may release up to one-twelfth of the
581 required principal balance of funds held in escrow pursuant to said
582 subdivision not more than once during any calendar month, if the
583 provider so requests in writing. The commissioner may authorize the
584 escrow agent to release additional funds held in escrow pursuant to
585 subdivisions (1) and (2) of this subsection, upon application by the
586 provider setting forth the reasons for the requested release and a plan
587 for replacing these funds within one year; the commissioner shall
588 respond within fifteen business days. If any escrow funds so released
589 are not replaced within one year the escrow agent shall so notify the
590 commissioner. A provider shall promptly notify the commissioner in
591 the event such provider uses funds held in escrow pursuant to
592 subdivisions (1) and (2) of this subsection. Upon written application by
593 a provider, the commissioner may authorize a facility to maintain a
594 reserve escrow or escrows in an amount less than the amounts set forth
595 in this section, if the commissioner finds that the contractual liabilities
596 of the provider and the best interests of the residents may be
597 adequately protected by a reserve escrow or escrows in a lesser
598 amount.

599 (b) No entrance fee escrows established or maintained under section
600 17b-524, as amended by this act, shall be subordinated to other loans or

601 commitments of any kind. No reserve fund escrows established or
602 maintained under this section shall be subordinated to other loans or
603 commitments, other than first mortgage loans or other long-term
604 financing obligations of the facility. No entrance fee [escrows] escrow
605 [or reserve fund escrows] shall be [(1)] pledged as collateral [, (2)] for
606 any loan or commitment, provided that a reserve fund escrow may be
607 pledged as collateral for a first mortgage loan or other long-term
608 financing obligation of the facility. No entrance fee escrows or reserve
609 fund escrows shall be (1) invested in any building or [healthcare]
610 health care facility of any kind, [(3)] (2) used for capital construction or
611 improvements or for the purchase of real estate, or [(4)] (3) removed
612 from the state if required to be maintained within this state. Interest on
613 the reserve fund required under this section shall be payable to the
614 provider.

615 (c) Any affiliate of a provider that controls any part of the reserve
616 escrow funds is liable for the debts of the provider up to the amount of
617 the provider's contribution to the fund plus any prorated interest the
618 fund may earn.

619 Sec. 10. Section 17b-526 of the general statutes is repealed and the
620 following is substituted in lieu thereof (*Effective July 1, 2015*):

621 (a) Construction of any facility or, if the construction of the facility is
622 to be completed in stages, construction of any stage of the facility shall
623 not begin until (1) fifty per cent of all the living units within the
624 planned facility, or fifty per cent of any designated part or parts
625 thereof determined by the commissioner [as evidencing financial
626 feasibility in accordance with subdivision (2) of subsection (b) of this
627 section,] have been presold, (2) a minimum deposit of [five per cent of
628 the entrance fee per unit for all presold units or] ten thousand dollars
629 per unit for all presold units [, whichever is less,] has been received by
630 the provider, and (3) the thirty-day rescission period set forth in
631 subdivision (1) of subsection (a) of section 17b-523, as amended by this
632 act, has expired.

633 [(b) When the construction of a facility is to be completed in stages,
634 construction of any stage shall not begin until (1) the financial
635 feasibility of the designated part of the project to be constructed,
636 maintained and operated as a facility prior to the construction,
637 maintenance and operation of the remaining planned part or parts has
638 been demonstrated to the commissioner by the filing of proof of
639 committed construction financing or other documentation of financial
640 feasibility deemed sufficient by the commissioner, and (2) the
641 commissioner has issued a written notice stating that proof of
642 committed construction financing or other documentation of financial
643 feasibility deemed sufficient by the commissioner has been filed. The
644 commissioner shall issue a written notice as to whether the proof or
645 other documentation submitted is sufficient within twenty days of the
646 filing of such proof or other documentation.

647 (c) Upon receipt of a notice of the commissioner stating that proof of
648 committed construction financing or other documentation of financial
649 feasibility filed pursuant to subsection (b) of this section is deemed
650 insufficient, the provider shall have thirty days from the date of the
651 issuance of such notice to file a written request for a hearing in
652 accordance with chapter 54. The final decision of the commissioner
653 after a hearing shall be subject to appeal in accordance with section 4-
654 183. Notwithstanding the provisions of subsection (f) of section 4-183,
655 no stay of the final decision of the commissioner shall be granted
656 pending the outcome of any appeal of such decision.]

657 (b) A provider shall give a resident, individually or through a
658 residents council, not less than one hundred twenty days' advance
659 written notice of any major construction, modification, renovation or
660 expansion project. Such notice shall include, but not be limited to, (1) a
661 project schedule and areas to be impacted, (2) funding needed for the
662 project, (3) financing plans, (4) the expected amount of debt to be
663 incurred, and (5) projected income from the project. If the provider
664 plans to use any incurred debt to fund a project at a location other than
665 the facility, the provider shall hold at least one meeting with residents

666 to discuss the project and advise residents in writing of any impact on
667 the resident's monthly service fee. The notice provisions in this section
668 shall not apply to immediate renovation or construction necessary to
669 address a public safety or health issue or related to a natural disaster,
670 provided reasonable written notice of such projects is provided to the
671 residents council or to each resident.

672 Sec. 11. Section 17b-527 of the general statutes is repealed and the
673 following is substituted in lieu thereof (*Effective July 1, 2015*):

674 [(a) A provider operating a facility located in this state shall file with
675 the department annually, in a form and manner prescribed by the
676 commissioner, financial and actuarial information for each facility
677 located in this state and operated by the provider or by a manager
678 under contract to the provider. The commissioner shall prescribe the
679 information to be filed which shall include but is not limited to the
680 following: Financial statements including certified current balance
681 sheets and certified income statements and pro forma statements for
682 the next five years as provided in section 17b-522 and such information
683 as is necessary to assess the actuarial soundness thereof; the basis for
684 amortization assumptions for the provider's capital costs; the facility's
685 current rate schedule; a statement of source and application of funds
686 for the five-year period beginning the year of initial filing pursuant to
687 section 17b-521 or subsequent filing pursuant to section 17b-529;
688 current and anticipated residential turnover rates; the average age of
689 the residents for the next five years; healthcare utilization rates,
690 including admission rates and days per one hundred residents by level
691 of care; occupancy rates; the number of healthcare admissions per
692 year; the days of care per year; and the number of permanent transfers.
693 Financial and actuarial projections contained in such studies shall be
694 determined on an actuarially sound basis using reasonable
695 assumptions for mortality, morbidity and interest. Each provider
696 operating a facility in this state shall make the information filed with
697 the department pursuant to this subsection available to each such
698 resident for viewing during regular business hours and, upon request,

699 shall provide such resident with a copy of the most recent filing with
700 the department. Each provider shall notify each resident, at least
701 annually, of the right to view the filings and of the right to a copy of
702 the most recent filing. The commissioner may adopt regulations in
703 accordance with chapter 54 to prescribe financial and actuarial
704 information to be filed pursuant to this subsection.]

705 [(b)] (a) A provider operating a facility in this state shall notify the
706 commissioner in writing prior to refinancing its existing indebtedness
707 or making any material change in its business or corporate structure.

708 (b) A provider shall notify the commissioner and the residents at all
709 facilities it operates not less than three months in advance of any
710 changes in ownership of the provider. The commissioner may excuse a
711 provider from the requirements of this section, on a case-by-case basis,
712 if reasonable written notice of the change in ownership is also
713 provided to each residents council at each facility operated by the
714 provider or, if no residents council exists, to each resident.

715 (c) A provider shall provide residents at all facilities it operates not
716 less than thirty days' advance written notice of increases in any
717 monthly service fees charged to the residents, along with an
718 explanation of such increases and an opportunity for dialogue and
719 comments from residents concerning such increases.

720 [(c)] (d) The commissioner may require a provider operating a
721 facility in this state to submit such information as the commissioner
722 requests if the commissioner has reason to believe that such facility is
723 in financial distress. The commissioner may require a provider
724 constructing a facility in this state to submit such information as the
725 commissioner requests if the commissioner has reason to believe that
726 such facility is at risk of being in financial distress. "Financial distress"
727 means the issuance of a negative going concern opinion, or failure to
728 meet debt service payments, or drawing down on debt service reserve.

729 [(d)] (e) The commissioner may adopt regulations in accordance

730 with chapter 54 to prescribe additional conditions that constitute
731 financial distress. To the extent that a provider seeks modification,
732 waiver or extension of any of the provider's material financial
733 covenants or material payment terms under a mortgage loan, bond
734 indenture or other long- term financing agreement, the provider must
735 report such requests in writing to the commissioner with a copy to the
736 applicable residents council of the facility or facilities operated by the
737 provider in this state, not later than seven business days after making
738 such requests. If the commissioner determines that a facility is in
739 financial distress, the provider of that facility shall, pursuant to a
740 process established by the commissioner, propose a remediation plan
741 to improve the provider's financial health. Such remediation plan shall
742 be submitted for approval and supervision by the commissioner and
743 shall be disclosed to the residents council of the provider. The provider
744 shall file regular reports with the commissioner and the provider's
745 residents council, regarding its progress in meeting its approved
746 remediation plan. Such reports shall be filed on a quarterly basis or on
747 an alternative schedule established by the commissioner.

748 Sec. 12. Subsection (c) of section 17b-529 of the general statutes is
749 repealed and the following is substituted in lieu thereof (*Effective July*
750 *1, 2015*):

751 (c) Nothing contained in sections 17b-520 to 17b-535, inclusive, as
752 amended by this act, or sections 2 to 4, inclusive, of this act shall be
753 construed to limit the remedies a person has under any other provision
754 of law.

755 Sec. 13. Section 17b-530 of the general statutes is repealed and the
756 following is substituted in lieu thereof (*Effective July 1, 2015*):

757 Any person who wilfully and knowingly violates any provision of
758 sections 17b-520 to 17b-535, inclusive, as amended by this act, or
759 sections 2 to 4, inclusive, of this act shall be fined not more than ten
760 thousand dollars or imprisoned for a period not to exceed one year, or

761 both.

762 Sec. 14. Section 17b-531 of the general statutes is repealed and the
763 following is substituted in lieu thereof (*Effective July 1, 2015*):

764 (a) The commissioner, or any agent authorized by the
765 commissioner, may conduct investigations within or outside of this
766 state as the commissioner deems necessary to determine whether any
767 person has violated any provision regarding the registration,
768 disclosure and escrow provisions relating to continuing-care contracts
769 or any regulation adopted pursuant to section 17b-533, as amended by
770 this act, or to aid in the enforcement of sections 17b-520 to 17b-535,
771 inclusive, as amended by this act, sections 2 to 4, inclusive, of this act
772 or in the prescribing of regulations under said sections. The
773 commissioner, or any agent authorized by the commissioner, shall
774 have the power to conduct any inquiry, investigation or hearing
775 pursuant to the provisions of this section relating to continuing-care
776 contracts and shall have the power to administer oaths and take
777 testimony under oath relative to the matter of inquiry or investigation.
778 At any hearing ordered by the commissioner, the commissioner or
779 such agent having authority by law to issue such process may
780 subpoena witnesses and require the production of records, papers and
781 documents pertinent to such inquiry. If any person disobeys such
782 process or, having appeared in obedience thereto, refuses to answer
783 any pertinent question put to [him] such person by the commissioner
784 or [his] the commissioner's authorized agent or to produce any records
785 and papers pursuant thereto, the commissioner or [his] the
786 commissioner's agent may apply to the superior court for the judicial
787 district of Hartford or for the judicial district wherein the person
788 resides or wherein the provider or the facility is located, or to any
789 judge of said court if the same is not in session, setting forth such
790 disobedience to process or refusal to answer, and said court or such
791 judge shall cite such person to appear before said court or such judge,
792 and upon appropriate order, to show cause why answer to such
793 question or production of such records should not be made.

794 (b) If as the result of any investigation relating to continuing-care
795 contracts, the commissioner determines that any provider has violated
796 any provision of sections 17b-520 to 17b-535, inclusive, as amended by
797 this act, or sections 2 to 4, inclusive, of this act the commissioner may,
798 notwithstanding the provisions of chapter 54, request the Attorney
799 General to seek a temporary or permanent injunction and such other
800 relief as may be appropriate to enjoin such provider from continuing
801 such violation or violations. If the court determines that such violation
802 or violations exist, it may grant such injunctive relief and such other
803 relief as justice may require and may set a time period within which a
804 provider shall comply with any such order. Any appeal taken from
805 any permanent injunction granted under this section shall not stay the
806 operation of such injunction unless the court is of the opinion that
807 great and irreparable injury will be done by not staying the operation
808 of such injunction. If the commissioner determines that any person has
809 violated the provisions of sections 17b-520 to 17b-535, inclusive, as
810 amended by this act, or sections 2 to 4, inclusive, of this act, the
811 commissioner may request the Attorney General to seek restitution or
812 damages and such other relief as may be appropriate on behalf of any
813 person injured by such violation.

814 Sec. 15. Section 17b-533 of the general statutes is repealed and the
815 following is substituted in lieu thereof (*Effective July 1, 2015*):

816 The commissioner shall adopt regulations in accordance with the
817 provisions of chapter 54 to carry out the provisions of sections 2 to 4,
818 inclusive, of this act, and sections 17b-520 to 17b-535, inclusive, as
819 amended by this act, including the prescribing of the minimum
820 amount of assets to be transferred or entrance fee which shall subject a
821 continuing-care contract to the provisions of said sections.

822 Sec. 16. Section 17b-535 of the general statutes is repealed and the
823 following is substituted in lieu thereof (*Effective July 1, 2015*):

824 There shall be an Advisory Committee on Continuing Care

825 appointed by the commissioner that shall meet not later than August 1,
826 2015, and at least quarterly thereafter. The advisory committee shall be
827 comprised of professionals such as accountants, actuaries, and
828 insurance representatives; representatives of the continuing-care
829 industry; a designee of the Commissioner of Social Services, who shall
830 report to the commissioner after every meeting on actions taken and
831 recommendations made at the meeting; and others knowledgeable in
832 the field of continuing care and familiar with the provisions of sections
833 17b-520 to 17b-535, inclusive, as amended by this act, and sections 2 to
834 4, inclusive, of this act. The advisory committee shall assist the
835 continuing-care staff in its review and registration of functions, shall
836 report to the commissioner on developments in the field, any special
837 problems associated with continuing care, and concerns of providers
838 and residents, and, when appropriate, shall recommend changes in
839 relevant statutes and regulations.

840 Sec. 17. Section 17b-528 of the general statutes is repealed. (*Effective*
841 *July 1, 2015*)

842
843 *[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline,*
844 *except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is*
845 *not underlined.]*
846

Co-Sponsors: REP. D'AGOSTINO, 91st Dist.; REP. BOLINSKY, 106th Dist.
REP. ADINOLFI, 103rd Dist.; REP. ZONI, 81st Dist.

847

848 H.B. 5358

849

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2015</i>	17b-520
Sec. 2	<i>July 1, 2015</i>	New section
Sec. 3	<i>July 1, 2015</i>	New section
Sec. 4	<i>July 1, 2015</i>	New section
Sec. 5	<i>July 1, 2015</i>	17b-521
Sec. 6	<i>July 1, 2015</i>	17b-522

Sec. 7	<i>July 1, 2015</i>	17b-523
Sec. 8	<i>July 1, 2015</i>	17b-524
Sec. 9	<i>July 1, 2015</i>	17b-525
Sec. 10	<i>July 1, 2015</i>	17b-526
Sec. 11	<i>July 1, 2015</i>	17b-527
Sec. 12	<i>July 1, 2015</i>	17b-529(c)
Sec. 13	<i>July 1, 2015</i>	17b-530
Sec. 14	<i>July 1, 2015</i>	17b-531
Sec. 15	<i>July 1, 2015</i>	17b-533
Sec. 16	<i>July 1, 2015</i>	17b-535
Sec. 17	<i>July 1, 2015</i>	Repealer section